

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

|                                 |   |                           |
|---------------------------------|---|---------------------------|
| IN RE: DIET DRUGS               | : | MDL DOCKET NO. 1203       |
| (PHENTERMINE, FENFLURAMINE,     | : |                           |
| DEXFENFLURAMINE) PRODUCTS       | : |                           |
| LIABILITY LITIGATION            | : |                           |
|                                 | : |                           |
| THIS DOCUMENT RELATES TO: _____ | : | _____                     |
|                                 | : |                           |
| _____<br>SHEILA BROWN, et al.   | : |                           |
|                                 | : |                           |
| v.                              | : |                           |
|                                 | : |                           |
| AMERICAN HOME PRODUCTS          | : |                           |
| CORPORATION                     | : | CIVIL ACTION NO. 99-20593 |

**MEMORANDUM AND PRETRIAL ORDER NO.**

Bartle, C.J.

July 21, 2008

Plaintiffs' Liaison Counsel has requested that this court enter a final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure with respect to the awards of attorneys' fees and costs in Pretrial Order ("PTO") Nos. 2622 (Oct. 3, 2002), 2859 (May 15, 2003), 7763A (Apr. 9, 2008) and 7896 (July 21, 2008).

Rule 54(b) provides:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

Fed. R. Civ. P. 54(b).

We have now made two awards of common benefit fees from the available accounts. In the Interim Award, PTO No. 2622, as modified in PTO No. 2859, we awarded: (1) \$38,430,727.82 in fees from the Fund A Escrow Account; (2) \$38,430,727.82 in fees from the Fund B Attorneys' Fees Account; and (3) \$76,861,455.63 in fees from the MDL 1203 Fee and Cost Account. In PTO No. 7633A we made an additional award of: (1) \$161,569,272 from the Fund A Escrow Account; (2) \$124,633,410.60 from the Fund B Attorneys' Fees Account; (3) an estimated \$71,447,638.10 from the Supplemental Class Settlement Fund; and (4) \$56,300,000 from the MDL 1203 Fee and Cost Account. We have also reimbursed a total of \$24,233,865.23 in costs associated with the Settlement Agreement and MDL. Most recently, we have entered PTO No. 7896, which among other things, approved the allocation and distribution of the award of attorneys' fees and costs in PTO No. 7763A.

The vast majority of the work in connection with the Settlement Agreement and the MDL has concluded, and this Class Action and MDL appear to be winding down. We do not intend to revisit the awards we have made in PTO Nos. 2622, 2859, 7763A and 7896. While there will be some future common benefit work and future petitions for attorneys' fees and costs, awards to come will pale in comparison with the ones this court has already approved.

It is time that any interested party be afforded the opportunity to obtain appellate review. Otherwise, the parties

and counsel may have to wait for a number of years to come, long after tens of millions of dollars of the attorneys' fees and costs have been awarded and paid. Accordingly, finding no just reason for delay with respect to the award of attorneys' fees and costs, we will enter PTO Nos. 2622, 2859, 7763A, and 7896 as final judgments pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. See Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 436 (1956); In re Diet Drugs Prods. Liab. Litig., 401 F.3d 143 (3d Cir. 2005).

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| AMERICAN HOME PRODUCTS          | : |                           |
| CORPORATION                     | : | CIVIL ACTION NO. 99-20593 |

**PRETRIAL ORDER NO. \_\_\_\_\_**

AND NOW this 21st day of July, 2008, for the reasons set forth in the accompanying Memorandum and finding no just reason for delay, it is hereby ORDERED, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that:

(1) Pretrial Order Nos. 2622 (Oct. 3, 2002), 2859 (May 15, 2003), 7763A (Apr. 9, 2008) and 7896 (July 21, 2008) are entered as final judgments with respect to all claims for awards of attorneys' fees for services performed in this litigation from its inception through March 31, 2007; and

(2) Pretrial Order Nos. 7763A and 7896 are entered as final judgments with respect to all claims for reimbursement of expenses for services performed in this litigation from its inception through March 31, 2007.

BY THE COURT:

/s/ Harvey Bartle III

C.J.